Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, OLC, RP, CNL-4M

Introduction

The Tenants seek the following relief under the *Residential Tenancy Act* (the "*Act*"):

- An order pursuant to s. 49 cancelling a Four-Month Notice to End Tenancy signed on April 13, 2022 (the "Four-Month Notice");
- An order for repairs to the rental unit pursuant to s. 32;
- An order pursuant to s. 62 that the Landlord comply with the *Act*, tenancy agreement, and/or the Regulations; and
- Return of their filing fee pursuant to s. 72.

S.D. and B.A. appeared as the Tenants. B.K. appeared as the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other's application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other's application materials.

Issues to be Decided

1) Should the Four-Month Notice be cancelled?
2) If not, is the Landlord entitled to an order of possession?
3) Should the Landlord be ordered to make repairs?

4) Should the Landlord be ordered to comply with the *Act*, tenancy agreement and/or the regulations?
5) Are the Tenants entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirm the following details with respect to the tenancy:

- The tenancy began in 2009.
- Rent of $875.00 is due on the first day of each month.
- The Landlord holds a security deposit of $436.50 in trust for the Tenants.

No written copy of the tenancy agreement was provided to me by the parties.

The Landlord advises that he had applied for a demolition permit for the residential property and obtained it while travelling in early April 2022. The Landlord advises that the Four-Month Notice was served on the Tenants via registered mail sent from the United States on April 13, 2022.

Tracking information for the Four-Month Notice was provided by the Landlord, indicating that the registered mail was ready for pick-up at its destination on April 27, 2022. The Landlord further advises that he sent a copy of the Four-Month Notice via email on April 13, 2022. It was acknowledged by the Landlord that parties did not agree to service via email beforehand.

The Tenants advise that the were not at home on April 27, 2022 and that saw the notice for the package on May 9, 2022. They acknowledged receiving the Four-Month Notice on May 9, 2022. The Tenants say they have asked the Landlord not to send information via email.

The Landlord advises that he owns an adjacent property which he demolished and redeveloped beginning in 2019. The Landlord says that the Tenant asked in 2019 if it was the intention to demolish their rental unit, to which the Landlord indicated it was. The Landlord says that the Tenant asked for another summer in the rental unit.

The Four-Month Notice, which was put into evidence by the parties, indicates that it was issued because the Landlord has obtained the necessary permits to demolish the rental unit. A copy of the demolition permit was put into evidence. The Landlord advised that residential property was built in the 1940s and has lived beyond its useful life. The Landlord indicates he obtained the opinion of a realtor who said that if it were to be sold it would need to be sold “as-is” as the property is a knock-down.

The Tenants did not argue that the Landlord is acting in bad faith. Rather, the Tenants focused their submissions with respect to an ongoing complaint they have regarding the state of repair for two exterior sets of stairs that grant access to the rental unit. They say that the stairs were built sometime in 2010 and that they are shaky and bow under their weight. Videos and photographs of the stairs were put into evidence by the Tenants.

The Landlord indicates that he hired a carpenter to attend the property on July 20, 2022, the day before the participatory hearing. The Landlord testified that the carpenter is a larger individual. I was told that the carpenter walked on the stairs and did not find that there was an issue. Despite this, the Landlord says that the carpenter added an extra stringer for the stairs and replaced some elements that were rotten.

The Tenants acknowledge the repair but say that the issues with the stairs persist. They say that new wood has been affixed to rotten wood. The Landlord emphasized that any repair issues have been dealt with.

Analysis

The Tenants apply to cancel the Four-Month Notice.

Pursuant to s. 49(6) of the *Act* a landlord may end a tenancy if it has all the necessary permits and approvals required by law and intends, in good faith, to demolish the rental unit. As per s. 49(2)(b) of the *Act*, when a notice is issued under s. 46(6) the landlord must give the tenant at least 4 months notice. Upon receipt of a notice to end tenancy issued under s. 49(6) of the *Act*, a tenant has 30 days to file an application disputing the notice. Where a tenant has filed an application to dispute the notice to end tenancy, the burden of providing that the notice was issued in compliance with the *Act* rests with the landlord.

Dealing first with service of the Four-Month Notice, the Landlord admits that the parties had not agreed to service via email in writing beforehand. Indeed, the Tenants

confirmed that they have asked that documents not be emailed to them. Accordingly, the Landlord emailing the Four-Month Notice to the Tenants on April 13, 2022 is not proper service as contemplated under the *Act* or Regulations.

The Landlord advises and I accept that the Four-Month Notice was served via registered mail on April 13, 2022. The evidence provided by the Landlord shows that the package was ready for pick-up on April 27, 2022. The Tenants say that they were not at home on April 27, 2022.

Section 90 of the *Act* permits for the deemed receipt of packages in circumstances where there is an absence of evidence of the date documents were actually received. It forms an evidentiary presumption of receipt that can be rebutted if fairness requires that be done, a point made clear by Policy Guideline #12. Presently, I find that it would be inappropriate to apply the deeming provisions under s. 90 as the registered mail package was sent from the United States. Indeed, the Landlord's own evidence shows that the package was not available for pick-up until April 27, 2022, which is beyond the 5-day deemed receipt for registered mail under s. 90.

In the present circumstances, I find that the Landlord served the Four-Month Notice in accordance with s. 89 of the *Act* by way of registered mail. Given it was sent from out of Canada, it was not delivered to the rental unit until April 27, 2022. The Tenants advise and I accept that they were not at the rental unit when delivery was attempted. The Tenants acknowledge receipt of the Four-Month Notice on May 9, 2022, which is the date I find that it was received. I find that the Tenants filed their application disputing the Four-Month Notice within the 30-days permitted to them under s. 49(8) of the *Act*.

Policy Guideline #2B provides guidance with respect to notices issued under s. 49(6) of the *Act*. It states that the following:

> "Permits and approvals required by law" can include:
>
> - demolition, building or electrical permits issued by a municipal or provincial authority;
> - a change in zoning required by a municipality to convert the rental unit to a non-residential use; or
> - a permit or license required to use it for a new purpose.
>
> …
>
> When ending a tenancy under section 49(6) of the RTA or section 42(1) of the MHPTA, a landlord must have all necessary permits and approvals that are

> required by law before they give the tenant notice. If a notice is disputed by the tenant, the landlord is required to provide evidence of the required permits or approvals.

In the present circumstances, I find that the Landlord has the necessary permits to demolish the rental unit as evidenced by the permit that was provided to the Tenants when the Four-Month Notice was issued. The Landlord testified that he demolished an adjacent property for redevelopment in 2019 and informed the Tenants of his intention to move onto the subject residential property next at that time. This was not disputed by the Tenants. On balance, I find that the Landlord has demonstrated his good faith intention to demolish the property. I make this finding because he obtained a permit, demolished an adjacent property in the past, and clearly communicated his intention to demolish the residential property to the Tenants in 2019.

I find that the Four-Month Notice was properly issued. The Tenants' application to cancel it is dismissed without leave to reapply.

Section 55(1) provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession.

I have reviewed the Four-Month Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, sets out the grounds for ending the tenancy, and is in the approved form (RTB-34). Given that the Four-Month Notice was received on May 9, 2022, the effective date of the notice is automatically corrected to September 30, 2022 upon application of s. 53 of the *Act*.

I find that the Landlord is entitled to an order of possession that is effective on September 30, 2022.

Dealing with the issue of the repair to the stairs, s. 32 of the *Act* imposes an obligation on a landlord to maintain a residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and, having regard to the age, character, and location of the rental unit, make it suitable for occupation for a tenant. I note that the onus of proving this aspect of the claim rests with the applicant Tenants.

I have reviewed the video evidence provided by the Tenants. To be certain, there is a degree of bowing on the stairs, but it is not apparently unsafe or in need of repair. Further, the confirmed that the Landlord retained a carpenter who attended the property on July 20, 2022. The video shows the stairs prior to the repairs that have been undertaken, so the issues it shows are no longer relevant as repairs have been undertaken.

To the extent there may have been a repair issue, I find that the Landlord has addressed the issue by having a carpenter attend the property to see to the stairs. I find that the Tenants have failed to show that the Landlord has breached his obligation under s. 32 of the *Act*. Accordingly, their application for repairs is dismissed without leave to reapply.

The Tenants final claim relates to an order that the Landlord comply with the *Act*, tenancy agreement, and/or the Regulations. The Tenants made no submissions on this topic at hearing. As it is the Tenants claim, they bear the burden of proving it. I find that the Tenants have failed to show that the Landlord is in breach of the *Act*, tenancy agreement, and/or the Regulations.

Conclusion

The Four-Month Notice was properly issued. The Tenants' application to cancel it is dismissed without leave to reapply.

The Landlord is entitled to an order of possession pursuant to s. 55 of the *Act*. As the Four-Month Notice was received by the Tenants on May 9, 2022, the effective date of the notice is automatically corrected to September 30, 2022 by application of s. 53 of the *Act*. The Tenants shall provide vacant possession of the rental unit by no later than **1:00 PM on September 30, 2022**.

The Tenants have failed to establish that the Landlord is in breach of his obligation under s. 32 of the *Act*. The Tenants' application for repairs is dismissed without leave to reapply.

The Tenants have failed to establish that the Landlord is in breach of the *Act*, tenancy agreement, and/or the tenancy agreement. The Tenants' application for an order under s. 62 of the *Act* that the Landlord comply is dismissed without leave to reapply.

As the Tenants were unsuccessful in their application, I find that they are not entitled to the return of their filing fee. Their application for its return under s. 72 of the *Act* is dismissed without leave to reapply.

It is the Landlord's obligation to serve the order of possession on the Tenants. If the Tenants do not comply with the order of possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 25, 2022

Residential Tenancy Branch